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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,503	07/06/2001	Lawrence W. Hu	GUID012CON	5237

7590 04/06/2004

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EXAMINER

SMITH, JEFFREY A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/900,503

Applicant(s)

HU ET AL.

Examiner

Jeffrey A. Smith

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MM

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-15 and 17-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6, 11-15, 17-20 and 23-27 is/are allowed.
- 6) ☒ Claim(s) 8-10, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>21</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 20, 2003 has been entered.

Information Disclosure Statement

The IDS filed December 1, 2003 has been considered. Applicant's attention is directed to certain corrections made by the Examiner on the associated PTO/SB/08A form. The change at page 4/10 has been made to correct an apparent typographical error. The change at page 5/10 has been made because the document listed by Applicant was not located in the parent case, however the Examiner located a similar document which was not listed and appeared to be the document intended by Applicant. The other changes at page 5/10 reflect the fact that the documents listed by Applicant are actually European Patent

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documents (EP) rather than German Patent documents (DE). The change at page 7/10 reflects the actual authorship of the document rather than an authorship referenced by the actual author in the document.

The IDS's filed May 20, 2003 and September 22, 2003 have not been considered. However, it appears that all references listed in such IDS's have been considered in the IDS filed December 1, 2003. Applicant should bring any citations that have been overlooked on these IDS's or any previous IDS's to the Examiner's attention. The Examiner asks that only references not previously considered be cited in future IDS's.

Claim Rejections - 35 USC § 103

Claims 8-10, and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hancock (U.S. Patent No. 6,331,157 B2) in view of Brief (U.S. Patent No. 4,747,395).

Hancock discloses (Fig. 1) a surgical retractor blade comprising a body (24), a channel, a curved rail (30), a plurality of slots (37).

The rail has a narrowed region which forms tabs (32) on a top portion.

Hancock does not disclose that the body comprises a polymer.

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Brief, in a similar blade (col. 1, lines 4-7), discloses the use of polymeric material. It would have been obvious to one of ordinary skill in the art to have provided the body of Hancock to have comprised a polymeric material because of its known chemical inertness, compatibility with cell metabolism and ability to withstand repeated sterilizations (col. 2, lines 48-57).

The recitations "first end adapted to attach to a separate, complete driving mechanism" has been considered. However, such recitation does not patentably distinguish these claims from the structure disclosed by Hancock. This "adapted to" clause does not move to provide the patentable moment necessary in obviating the combination of Hancock and Brief.

Allowable Subject Matter

Claims 1-6, 11-15, and 17-20, and 23-27 are allowable over the prior art of record.

Response to Arguments

Applicant's arguments filed May 20, 2003 have been fully considered but they are not persuasive.

Applicant cites Venezia and argues that the changes made to claim 8 are patentable in view of such citation.


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The Examiner disagrees because Venezia is directed to the functional association between elements positively claimed. In the instant case, Applicant is not positively claiming the driving mechanism.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is 703-308-3588. The examiner can normally be reached on M-F 6:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-308-3691 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


Jeffrey A. Smith
Primary Examiner
Art Unit 3625

jas
April 4, 2004